

1 Law Offices of  
2 **CARL D. MACPHERSON**  
3 177 North Church, #315  
4 Tucson, AZ 85701

(520) 622-2555  
Fax: (520) 622-0346

5 PCC No.: 35932  
6 ASB NO.: 6253

Attorney for Plaintiffs

7  
8 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
9 IN AND FOR THE COUNTY OF COCHISE

10 DANNY R. HATCH, JR. and DENICE R.  
HATCH, husband and wife,

11 Plaintiffs,

12 vs.

13 RONALD J. KLUMP and JANE DOE  
14 KLUMP, husband and wife, ROY J. KLUMP  
15 and JANE DOE KLUMP, husband and wife,  
16 and DAYLA HEAP and JOHN DOE HEAP,  
wife and husband,

17 Defendants

FILED

2015 APR -7 PM 2:03

DEPUTY CLERK OF SUPERIOR COURT

DE

DEPUTY

JP

SV

NO. CV 201400128

ANSWER TO MOTION FOR  
SUMMARY JUDGMENT

Assigned: Hon. John Keliher

18 NOW COMES your Plaintiff's, by and through their counsel Carl D. Macpherson,  
19 and pursuant to Rule 56 of the Arizona Rules of Civil Procedure respectfully request this  
20 Honorable Court deny the Defendant's Motion for Summary Judgment. This motion is  
21 supported by the attached memorandum of points and authorities.

22  
23 PLAINTIFFS' STATEMENT OF FACTS

24 1. Defendant has access to his property via both North Johnson Saddle Road and  
25 Secreto Ranch Road.

26 2. The Record of Survey, Book one, page 56 does not reference any public  
27 easement. See Exhibit 1.

28 3. Continental Service Corporation conveyed parcel 32 (Plaintiff's property  
including the easterly 60 feet thereof), to LELAND and BETTY REIF on September 17,

1 1977. Said special warranty deed did not reference the right away easement agreement  
2 created by Continental Service Corporation 12876. See Exhibit 2.

3 4. Leland and Betty Reif did convey subject property to Sandra Erhardt without  
4 reference to the easement agreement, on May 11, 1989. See Exhibit 3

5 5. Sandra Erhardt conveyed parcel 32 to the Plaintiffs without reference to the right  
6 away the easement agreement from Continental Service on August 18, 2013. See Exhibit  
7 4.

8 6. Plaintiffs have admitted that the easterly 60 feet of Plaintiffs' property is a private  
9 easement which can only be used with the permission of Continental Service Corporation.  
10 See Defendant's State of Facts, paragraphs 7 and 10.

11 7. Defendants admit they did not use the easterly 60 feet of Plaintiffs' property  
12 between 2004 and December of 2013, being greater than 10 years. See Defendant's  
13 Statement of Facts, paragraph 14.

14 8. The public, including the Defendants did not use said 60 feet between 1989 and  
15 2003. See affidavits of Lefty Sheppard and Sandra Erhardt.

16 9. Between 1989 and December 30, 2013, Plaintiffs and their predecessors in title  
17 have used said 60 foot strip openly, notoriously and hostilely as their private driveway,  
18 being the only access to the residence thereon, to the exclusion of the general public,  
19 including the Defendants. See affidavits of Lefty Sheppard, Sandra Erhardt and Danny R  
20 Hatch Jr.

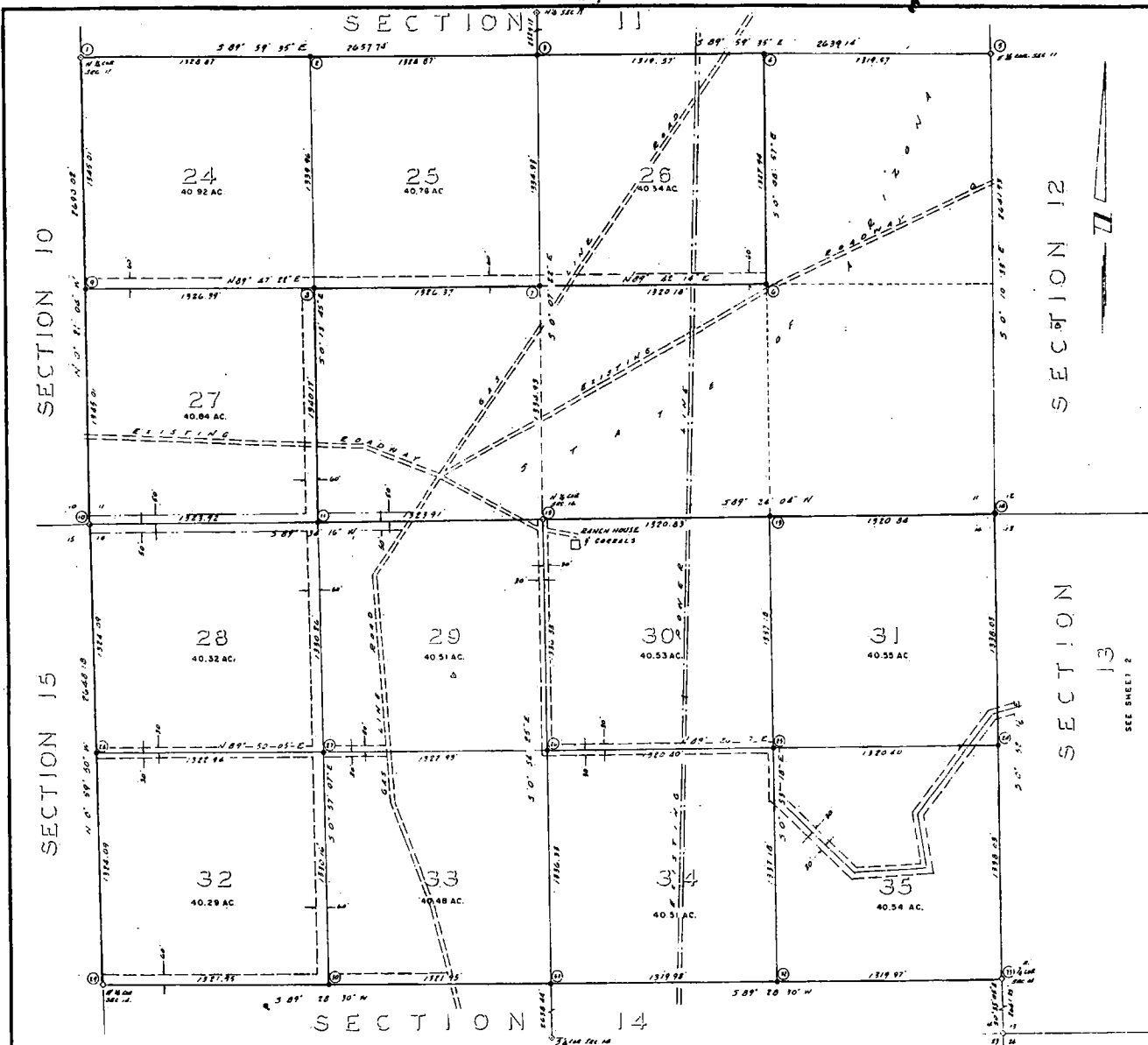
21  
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24 DATED this 2 day of April, 2015.

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28 Carl D. Macpherson

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Copy of the foregoing to:

Paul W. Melo  
2107 B Paseo San Luis, Suite C  
Sierra Vista, AZ 85635



- RECOVERED USGLO MARKED STONE
- RECOVERED USGLO BRASS CAP MON
- SET ALUMINUM CAP "RLS 7599"
- EASEMENT FOR INGRESS, EGRESS AND UTILITIES, 60 FT. IN WIDTH.
- EASEMENT FOR INGRESS, EGRESS AND UTILITIES, 100 FT. IN WIDTH.
- ⊙ SURVEY POINT NUMBER

THE ARIZONA PLANE CO-ORDINATE SYSTEM, EAST ZONE, WAS USED IN THIS SURVEY, WITH BEARINGS BASED ON USC 808 CONTROL SURVEYS. ALL DISTANCES SHOWN ARE GRID DISTANCES. THE GROUND-TO-GRID DISTANCE COMBINED FACTOR IS 0.99973666.

EXHIBIT 1

			<b>RECORD OF SURVEY</b>		SHEET 1 OF 2 SHEETS  76-0080 C-1 SCALE: 1"=400' DATE: NOVEMBER 1976
			OF A PART OF SECTIONS 11 AND 14, T.13 S., R.25 E. G.E.S.R.M. COCHISE COUNTY, ARIZONA		
			SETTLEMAYER SURVEYS TUCSON, ARIZONA		
			BY DATE Survey SUT 11-76 Drawn SUT 11-76 Ck'd DAS 11-76 F.M.S. No. 13-25		

STATE OF ARIZONA

COUNTY OF COCHISE

IN TICKET 1211 A 492

at the request of

When recorded, mail to:

Richard L. Keef

1117 W. Granada North

Willcox, AZ 85641

TEL. 99382-9032

sa. I hereby certify that the within instrument was filed and recorded

and indexed in DE

Witness my hand and official seal

CHRISTINE RHODE

By *J. Haggerty*



Fee No.

Compared

Photostated

Fee: \$3.00

**SPECIAL WARRANTY DEED**  
(JOINT TENANCY)

NO FEE NECESSARY  
UNDER ARS 42-1614  
EXEMPT

For the consideration of Ten Dollars, and other valuable consideration, the undersigned CONTINENTAL SERVICE CORP. (a corporation organized under the laws of the State of Arizona) formerly Transamerica Title Insurance Company, an Arizona Corporation, the company, its officers and agents, hereby convey to

Richard L. Keef, a single man, of the County of Cochise, State of Arizona, the following described property, to have and to hold unto him, his heirs and assigns forever, together with strength and privilege appurtenant and appertenant thereto.

That the said Richard L. Keef, his heirs and assigns, shall and lawfully shall, unto him, his heirs and assigns forever, together with strength and privilege appurtenant and appertenant thereto, the following described property, to have and to hold unto him, his heirs and assigns forever, together with strength and privilege appurtenant and appertenant thereto.

Block 32, as shown on REPORT OF SURVEY, filed in Book 1 of Surveys, pages 56 & 56A, records of Cochise County, Arizona. AKA: BELLELEGER RANCHES.

NO TRANSFER FEE NECESSARY  
EXEMPT UNDER ARS 42-1614 E1

That the said Richard L. Keef, his heirs and assigns, shall and lawfully shall, unto him, his heirs and assigns forever, together with strength and privilege appurtenant and appertenant thereto, the following described property, to have and to hold unto him, his heirs and assigns forever, together with strength and privilege appurtenant and appertenant thereto.

and the Grantor herein binds himself and his successors to warrant and defend the title, as against all acts of the Grantor herein and his successors, to the matters above set forth.

The Grantor states that no recitation of the terms of the joint tenancy provision hereof, in the handwriting of this Grantor, appears in the instrument hereof between the Grantor and Grantee.

at  
verified

Dated this 17th day of September 1977

CONTINENTAL SERVICE CORPORATION, as Trustee,  
not personally and in no other capacity.

By

*William W. ...*  
Asst. Trust Officer

STATE OF ARIZONA

COUNTY OF COCHISE

That the said Richard L. Keef, his heirs and assigns, shall and lawfully shall, unto him, his heirs and assigns forever, together with strength and privilege appurtenant and appertenant thereto, the following described property, to have and to hold unto him, his heirs and assigns forever, together with strength and privilege appurtenant and appertenant thereto.

That the said Richard L. Keef, his heirs and assigns, shall and lawfully shall, unto him, his heirs and assigns forever, together with strength and privilege appurtenant and appertenant thereto, the following described property, to have and to hold unto him, his heirs and assigns forever, together with strength and privilege appurtenant and appertenant thereto.

TEL. 99382-9032

EXHIBIT 2

MAY 22 1989 11AM H 2  
7.00

WHEN RECORDED, MAIL TO:

Sandra Erhardt  
Box 1112  
Blythe, Ca. 92226

STATE OF ARIZONA

County of \_\_\_\_\_

Recorded at the request of \_\_\_\_\_



FEE # 890510255  
OFFICIAL RECORDS  
COCHISE COUNTY  
DATE 05/22/89 HOUR 11

REQUEST OF  
PIONEER TITLE CO  
CHRISTINE RHODES-RECORDER  
FEE : 11.00 PAGES : 1

802734

## WARRANTY DEED

For the consideration of Ten Dollars, and other valuable considerations,

LELAND L. REIF and BETTY J. REIF, husband and wife

hereafter called the Grantor, hereby conveys to

SANDRA ERHARDT, a single woman

the following real property situated Cochise County, Arizona, together with all rights and privileges appurtenant thereto:

Parcel 32, as shown on REPORT OF SURVEY, file in Book 1 of Surveys, pages 56 and 56A, records of Cochise County, Arizona, being a portion of the Northwest quarter of Section 14, Township 13 South, Range 25 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona;

EXCEPT all coal and other minerals as reserved in Patent from United States of America.

Subject to current taxes and other assessments, reservations in patents and all easements, rights-of-way, encumbrances, liens, covenants, conditions, restrictions, obligations and liabilities as may appear of record, the Grantor warrants the title against all persons whomsoever.

Dated this 11 day of May, 1989.

*Leland L. Reif*  
*Betty J. Reif*

STATE OF Arizona  
County of Pinal ss.

This instrument was acknowledged before me this 11 day of May, 1989, by Leland L. Reif and Betty J. Reif

My commission will expire: My Commission Expires Nov. 30, 1989

*Robert C. Brown*  
Notary Public

STATE OF \_\_\_\_\_  
County of \_\_\_\_\_ ss.

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_

My commission will expire:

Notary Public

FURNISHED THROUGH THE COURTESY OF TRANSAMERICA TITLE INSURANCE COMPANY

890510255

EXHIBIT 3



OFFICIAL RECORDS  
COCHISE COUNTY  
DATE 09/02/03 HOUR 3

at the request of Pioneer Title Agency, Inc.

when recorded mail to  
DANNY D. HATCH JR.  
PO BOX 66  
WILLCOX, AZ. 85644

REQUEST OF  
PIONEER TITLE AGENCY  
CHRISTINE RHODES-RECORDER  
FEE : 12.00 PAGES : 4

00808899-SH

Tax Code: 202-55-007

## Warranty Deed Community Property with Right of Survivorship

For the consideration of Ten Dollars, and other valuable considerations,

**SANDRA ERHARDT, A single woman**

do/does hereby convey to

**DANNY D. HATCH JR. and DENICE R. HATCH, Husband and Wife**

not as tenants in common nor as a community property estate nor as joint tenants with right of survivorship, but as community property with right of survivorship, the following real property situated in Cochise County, Arizona, together with all rights and privileges appurtenant thereto:

Parcel 32, as shown on Report of Survey, filed in Book 1 of Surveys, pages 56 and 56A, records of Cochise County, Arizona, being a portion of the Northwest quarter of Section 14, Township 13 South, Range 25 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona;

EXCEPT all coal and other minerals as reserved in Patent from United States of America.

POWER OF ATTORNEY IS BEING RECORDED CONCURRENTLY HERewith  
SUBJECT TO: Current taxes and other assessments, reservations in patents and all easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations, and liabilities as may appear of record.

The Grantor warrants the title against all persons whomsoever.

The Grantees by signing the acceptance below evidence their intention to acquire said premises *as community property with right of survivorship.*

Dated this **18th day of August, 2003**

Accepted and approved:

Grantees

*Danny D. Hatch Jr.*  
*Denise Rene Hatch by P.O.A.*  
DANNY D. HATCH JR.

Grantors

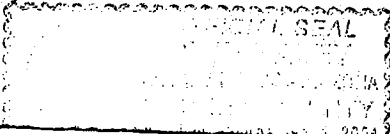
*Sandra Erhardt*  
SANDRA ERHARDT

*Denise R. Hatch*  
DENICE R. HATCH

STATE OF ARIZONA

County of Cochise

} ss



This instrument was acknowledged before me this 18 day of August, 2003 by DENISE RENE HATCH as Attorney in Fact for DANNY D. HATCH, JR. and DENISE R. HATCH

*Denise Rene Hatch*

Notary Public

My commission will expire

**EXHIBIT 4**

do/does hereby convey to

**DANNY D. HATCH JR. and DENICE R. HATCH, Husband and Wife**

not as tenants in common nor as a community property estate nor as joint tenants with right of survivorship, but as community property with right of survivorship, the following real property situated in Cochise County, Arizona, together with all rights and privileges appurtenant thereto:

Parcel 32, as shown on Report of Survey, filed in Book 1 of Surveys, pages 56 and 56A, records of Cochise County, Arizona, being a portion of the Northwest quarter of Section 14, Township 13 South, Range 25 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona;

EXCEPT all coal and other minerals as reserved in Patent from United States of America.

POWER OF ATTORNEY IS BEING RECORDED CONCURRENTLY HERewith  
SUBJECT TO: Current taxes and other assessments, reservations in patents and all easements, rights of way, encumbrances, liens, covenants, conditions, restrictions, obligations, and liabilities as may appear of record.

The Grantor warrants the title against all persons whomsoever.

The Grantees by signing the acceptance below evidence their intention to acquire said premises *as community property with right of survivorship*.

Dated this 18th day of August, 2003

Accepted and approved:

Grantees

Danny D. Hatch Jr.  
Denise Rene Hatch by P.O.A.  
DANNY D. HATCH JR.

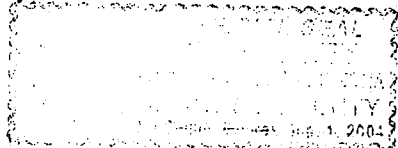
Grantors

Sandra Erhardt  
SANDRA ERHARDT

Denise R. Hatch  
DENISE R. HATCH

STATE OF ARIZONA

County of Cochise



} SS

This instrument was acknowledged before me this 28 day of August, 2003 by **DENISE RENE HATCH** as Attorney in Fact for **DANNY D. HATCH, JR. and DENISE R. HATCH**

Denise Rene Hatch  
Notary Public

My commission will expire \_\_\_\_\_

STATE OF ARIZONA

County of Cochise



} SS

This instrument was acknowledged before me this 28 day of August, 2003 by **SANDRA ERHARDT**

Sandra Erhardt  
Notary Public

My commission will expire \_\_\_\_\_

030931359

RECORDED RETURN TO:  
CONTINENTAL SERVICE CORPORATION  
P.O. BOX 500  
PHOENIX, ARIZONA 85001  
Attn: Dan Robledo  
Trust No. 99383

COCHISE COUNTY RECORDER  
PLEASE MAIL TO:

# RIGHT-OF-WAY EASEMENT

KNOW ALL MEN BY THESE PRESENT, that the undersigned, CONTINENTAL SERVICE CORPORATION, as Trustee under Number 99383, does hereby grant and convey to the public for ingress and egress and public utilities, an easement to construct, operate and maintain utilities and appurtenances across, over and under the surface of the premises hereinafter described.

Said easement is situate in Cochise County, Arizona and is more particularly described as follows, to wit;

SEE ATTACHED EXHIBIT "A"

Together with the said easement is granted the right to operate, repair, replace, maintain and use said easement; to add to or alter any improvements and/or facilities at any reasonable time, with access to said easement and egress therefrom to permit normal operations of public utilities in connection with said easement.

Grantor shall not erect or construct or permit to be erected or constructed any building or other structure in the above described easement.

It is further understood that, whenever necessary, words used in this instrument in the singular shall be construed to read in the plural and that words used in the masculine gender shall be construed to read in the feminine.

IN WITNESS WHEREOF, the CONTINENTAL SERVICE CORPORATION, as Trustee has caused its corporate name to be signed and its corporate seal to be affixed by the undersigned officer thereunto duly authorized this 8th day of December, 1976, AD.

CONTINENTAL SERVICE CORPORATION  
As Trustee *and not personally*

By Dan Robledo  
Trust Officer

STATE OF ARIZONA )  
County of Maricopa )

Before me this 8th day of December, 1976 personally appeared DAN ROBLED0 who acknowledged himself to be a Trust Officer of the CONTINENTAL SERVICE CORPORATION, and that he as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the Corporation as Trustee, by himself as such officer.

Corroborated Signature  
Notary Public

My Commission Expires:  
10-29-78

456

EXHIBIT 5

EXHIBIT A-6

The following described easements for ingress and egress and public utilities refer to parcel numbers as recorded on a report of survey filed in Survey Book 1, Pages 56 and 56A in the Offices of the Cochise County Recorder.

1. The easement is on the South 60 feet of Parcels 24, 25 and 26.
2. The easement is on the South 50 feet and East 60' of Parcel 27.
3. The easement is on the North 50 feet, East 60 feet, and South 30 feet of Parcel 28.
4. The easement is on the North 50 feet and South 30 feet of Parcel 29.
5. The easement is on the North 30 feet, East 60 feet and South 60 feet of Parcel 32.
6. The easement is on the North 30 feet and South 60 feet of Parcel 33.